IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.1120 of 2007

Sana Constructions — Applicant
Vs.
Mr.Lalji L. Dedia & anr. — Respondents

Mr.M.S.Mohite for applicant.
Mr.Y.S.Shinde, APP for State.

CORAM: B.H.MARLAPALLE, J.

July 31, 2007.

P.C.

1. Heard Mr.Mohite, the learned counsel for the applicant which is the original complainant in Regular Criminal Case No.1329 of 2006. The dishonoured cheque amount which was the subject matter in the said complaint was Rs.32,19,000/- and while allowing the complaint as per the judgment and order dated 22/2/2007, the learned Magistrate directed to pay compensation of Rs.50 lakhs by the accused to the complainant under Section 357(3) of Cr.P.C. and in default he has to suffer RI for three months. It appears that an application at Exhibit 73 was filed by the accused before the learned Magistrate and as per the order dated 22/2/2007 the accused was directed to be released on bail but on the following conditions:

(a) the accused to deposit the compensation amount of Rs.50 Lakhs by 28/2/2007,

(b) accused to be released on PR bond of Rs.15,000/- with one or more sureties to be furnished,

(c) undertaking was to be filed that the Court order will be obeyed and the accused will not leave the local jurisdiction of the Court and abscond,

(d) if the accused failed to deposit the amount of Rs.50 lakhs before 28/2/2007, the suspension of sentence will automatically set aside and it would amount to breach of the Court order.

2. The accused filed Criminal Appeal No.21 of 2007 against the order of conviction and sentence and the appeal has been admitted by the Sessions Court. In the said appeal, an application came to be filed praying for suspension of sentence. By his order dated 27/2/2007, the learned Ad-hoc Addl. Sessions Judge-I, Raigad-Alibag was pleased to suspend the sentence on the condition of depositing an amount of

Rs.5 lakhs on or before 27/3/2007 and out of the said amount, Rs.1 lakh was directed to be deposited on the same day i.e. on 27/2/2007. This order dated 27/2/2007 is a subject matter of challenge in this application. Having regards to the law laid down by the Supreme Court in the case of Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. **[2007 All MR (Cri) 1775 (S.C.]**, it is necessary for the lower Appellate Court to ensure that the order of sentence is suspended on deposit of a reasonable amount of compensation as directed by the trial Court. In the instant case it is true that initially the accused appears to have given an undertaking to deposit the entire amount of Rs.50 lakhs by 28/2/2007 and this undertaking is through the learned Advocate representing the accused before the trial Court and consequently an application has been filed before the lower Appellate Court for suspending the sentence and the same has been allowed by directing to deposit Rs.5 lakhs out of the compensation of Rs.50 lakhs. Though the appeal was directed to be expedited, Mr.Mohite states that the appeal is still pending. Rather than entering into any further controversies, it would be appropriate that the pending appeal is decided within a fixed period and specially when an

amount of Rs.5 lakhs has already been deposited.

3. Hence it is directed that Criminal Appeal No.21 of 2007 be heard and decided by the lower Appellate Court by 30th September 2007 on its own merits.

4. The petition is disposed off in terms of the above order.

5. Writ to go to the lower Appellate Court forthwith.

(B.H.MARL